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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 918

SUNSET REALTY CORP.,
Petitioner,
v.
TAX ASSESSOR, TAX COLLECTOR, BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, and COMPTROLLER OF THE STATE OF FLORIDA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, STATE OF FLORIDA

REPLY BRIEF FOR PETITIONER

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The trial court followed the Florida rule and did not consider the issue of discrimination.

Petitioner has shown (Petition, pp. 11-13) that the Florida courts will provide no relief (except perhaps in mandamus) in the absence of assessment in excess of full value, upon a claim of discriminatory assessment. Respondent does not question that this is the rule applied by the Florida courts in such cases.

The Florida rule is clear. For example, in the *Sproul* case, cited at page 11 of the Petition, the Florida District Court of Appeals in 1962 was faced with the question of:

> "whether or not the complaint states a cause of action for injunctive relief in a challenge to the real estate assessment . . . when it fails to allege that such assessment is in excess of the full cash value of the property."

In that case the District Court of Appeals affirmed the trial court and held that there was no cause of action stated. It applied the Florida rule by refusing to consider the question of discrimination in the absence of any allegation of assessment in excess of full value.

It is Respondent's contention that the Florida trial court in this case did not apply the Florida rule. Instead, Respondent contends that the trial court, after determining that Petitioner's lands were not assessed in excess of full value (which determination by itself under the Florida rule would have precluded relief), gratuitously went on to consider an issue which would then be irrelevant under the Florida rule—the issue of discrimination. This is not so.

The trial court followed the Florida rule in this case and did not consider the issue of discrimination. After ruling that Petitioner's lands were not assessed in excess of full value (Appendix to Petition, p. A-2) the trial court thereupon, without further rulings, held for the Respondent. This is the Florida rule, no relief in the absence of assessment in excess of full value. The Florida appellate court's analysis of the trial

court's decree in this case only serves to further demonstrate that the Florida rule was applied.

> "The Court, in effect, found that plaintiff had failed to sustain the burden of proof laid upon it of establishing that the property was assessed in excess of full cash value; thus it was not entitled to injunctive relief because of unlawful discrimination." (Appendix to Petition, pp. A-3-5).

In this case consideration of the issue of discrimination would have been entirely superfluous after the trial court's determination that the assessment was not in excess of full value. The trial court therefore never had occasion to consider the issue of discrimination.

The trial court's decree, the appellate court's interpretation of that decree, as well as the trial court's opinion on the motion to amend the pleadings* (Ap-

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* The trial court's denial of the motion was based on the Florida rule. The court determined that Petitioner's lands were not assessed in excess of full cash value. It refused to consider any amendment since under the Florida rule no other issue could be considered except in mandamus if the lands were not assessed in excess of full cash value.

Respondent asserts that in denying this motion the trial court was foreclosing Petitioner from raising new and prejudicial issues and questions. Were this so, there would be no purpose in paragraph 3 of the opinion denying the motion. That paragraph can only have meaning if the trial court was applying the Florida rule.

Respondent's main point is that the question of discrimination was considered by the trial court on the merits. At page 8 of his brief in opposition it is stated that the motion to amend, if granted:

> "would . . . have changed the whole character of the case, create new issues, and present a different kind of trial than the one just completed. This, in fact, questions the propriety of the whole tax roll, and the tax assessor's methods of carrying out the functions of his office".

Respondent is saying, in effect, that the denial of the motion foreclosed these questions and issues. Denial of the motion clearly had that effect. Under these circumstances how could the trial court have provided Petitioner with an adequate hearing on the merits of the question of discrimination?

pendix to Petition pp. C-3-4) all show that the Florida rule was applied in this case. There is nothing in the Record—and Respondent has cited nothing—to support Respondent's contention that the trial court reached the question of discrimination.

Under the Florida rule, which, as indicated, the Respondent does not dispute, a taxpayer has no recourse against discriminatory assessment other than mandamus, if his property is taxed at full value. However, this Court held in the *Sioux City Bridge* case (cited at page 9 of the Petition) that

> "the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed."

In the *Hillsborough* case (cited at page 10 of the Petition), this Court concluded that the state remedy of mandamus was not adequate to protect rights under the equal protection clause.

The Petition should be granted.

Respectfully submitted,

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May 21, 1965